

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DELROY OLIVER DAVY,

Defendant.

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CRIMINAL ACTION NO.
1:09-cr-0543-AT

CIVIL ACTION NO.
1:16-cv-3761-AT

ORDER

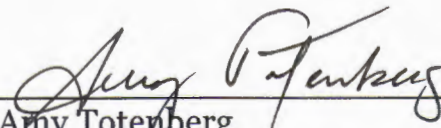
This matter is before the Court on the Magistrate Judge's Report and Recommendation as to Defendant Delroy Oliver Davy's pro se motion to correct his sentence pursuant to 28 U.S.C. § 2255 [Doc. 86]. In his motion filed on October 6, 2016, Defendant Davy argues that this successive motion¹ under § 2255 is not barred by the Antiterrorism and Effective Death Penalty Act [*Id.* at 3]. The Magistrate Judge determined that the motion is barred, however, as the reduction of sentence that Defendant received in June 2016 pursuant to Rule 35 was not a new judgment, as Defendant argued, but rather a modification of his original sentence [Doc. 86]. The Magistrate Judge therefore recommends that this Court deny Defendant's new § 2255 motion without prejudice, as the Court

¹ Defendant's first motion to correct his sentence pursuant to 28 U.S.C. § 2255 was filed on April 29, 2013 [Doc. 60]. That motion was denied on May 28, 2013 [Doc. 61].

lacks jurisdiction to consider it given that Defendant did not seek permission from the 11th Circuit Court of Appeals prior to filing it.

The Court notes that no objections have been filed in response to the Magistrate's Report and Recommendation. Therefore, in accordance with 28 U.S.C. § 636(b)(1) and Rule 59 of the Federal Rules of Criminal Procedure, the Court has reviewed the Magistrate Judge's Recommendation for clear error and finds none. Accordingly, the Court receives the Magistrate Judge's Report and Recommendation with approval and hereby **ADOPTS** the Report and Recommendation as the opinion of this Court. For the reasons stated in the Magistrate Judge's Report and Recommendation, the Court **DENIES WITHOUT PREJUDICE** Defendant Davy's latest motion to correct his sentence pursuant to 28 U.S.C. § 2255 [Doc. 85]. Defendant is **DENIED** a certificate of appealability

It is so **ORDERED** this 6th day of December, 2016.



Amy Totenberg
United States District Judge